

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-206550

DATE: October 27, 1982

MATTER OF: Sergeant Lynn D. Timm, USMC

DIGEST: Marine serving in an enlistment period for which he received a regular reenlistment bonus, received an early discharge for the purpose of immediate reenlistment for which a selective reenlistment bonus was payable. Recoupment need not be made of the portion of the regular bonus attributable to the unserved portion of the previous enlistment. The selective bonus payable for the new enlistment is computed only on "additional obligated" service which does not include the unexpired period from the previous enlistment. The purpose of the recoupment requirement in such a case is to prevent payment of two bonuses for one period of service which would not occur in this case.

This action is in response to a letter from the Disbursing Officer, Marine Corps Finance Center, requesting a decision regarding partial recoupment of a regular reenlistment bonus in the case of Sergeant Lynn D. Timm, USMC. The matter has been assigned control number DO-MC-1136 by the Department of Defense Military Pay and Allowance Committee.

The question asked is whether the service must recoup a portion of Sergeant Timm's regular reenlistment bonus because he was discharged early to immediately reenlist and receive a selective reenlistment bonus payable for the new reenlistment. The selective bonus is computed so as to exclude a period equal to the unexpired term of the prior enlistment. The answer is that there should be no recoupment of the regular bonus.

Sergeant Timm reenlisted in the Marine Corps for 5 years on December 9, 1975, for which he was paid a \$2,000 regular reenlistment bonus. On March 7, 1980, he

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was discharged from that enlistment for the purpose of immediately reenlisting for a 6-year period for which a selective reenlistment bonus was payable.

Because his discharge was more than 3 months prior to the normal expiration date of the enlistment for which he received the bonus, the question arises whether \$301.08, representing the unearned portion of the regular reenlistment bonus, must be recouped. Payment of the selective reenlistment bonus for the new reenlistment period was reduced by \$1,961.03 to cover the 9-month period which he had yet to serve in the previous enlistment since payment of that bonus is computed so as to exclude that remaining period of service.

The effect of these two actions was to deny Sergeant Timm any bonus, regular or selective, for the period of service from March 8 to December 7, 1980.

The law governing payment of a regular reenlistment bonus was contained in 37 U.S.C. 308 (1970). Its provisions were derived from provisions enacted in 1949 for the purpose of encouraging members of the Armed Forces to remain in the service for additional enlistment periods after completing their initial obligated service time. This was to help the services maintain a body of trained personnel while reducing the costs of training new personnel as replacements. The amount of the bonus was calculated by multiplying a percentage of the member's monthly basic pay by the number of years of additional service he obligated himself to serve. However, the maximum cumulative total of bonuses was set at \$2,000. 37 U.S.C. 308(a) and (c) (1970).

This bonus program was augmented in 1965 by the variable reenlistment bonus program authorized by 37 U.S.C. 308(g) which was added by section 3 of Public Law 89-132, 79 Stat. 545, 547. The purpose of the variable bonus was to provide an additional financial incentive to members with critical military skills which were in short supply to reenlist or extend their enlistments. The amount of the variable bonus was a multiple of the regular reenlistment bonus to which the member was otherwise entitled, with the size of the multiplier being

based upon the degree of critical need for the particular skill.

Under 37 U.S.C. 308(g) (1970) recoupment of both the regular and variable bonuses was required any time a member who had received such a bonus was "voluntarily, or because of his misconduct" discharged prior to the expiration of the enlistment period for which the bonuses were paid. Recoupment was for a pro rata amount of the bonus based on the unexpired part of the enlistment period for which the bonus was paid.

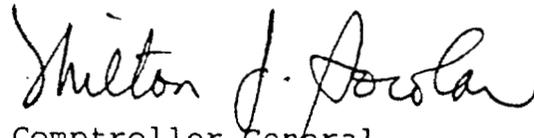
The statutory authority for the regular and variable bonus programs was repealed effective June 1, 1974, although limited eligibility to receive those bonuses was continued for certain members who were on active duty on the effective date of the act. See the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Public Law 93-277, 88 Stat. 119. Apparently Sergeant Timm was one of those whose eligibility was continued. The 1974 act also replaced the previous bonus program with the current selective reenlistment bonus program presently codified in 37 U.S.C. 308 (1976). The new bonus program was established to accomplish a purpose similar to the programs it replaced, that is, to provide a financial inducement to members of the Armed Forces who have critical military skills to reenlist or extend their enlistments. The selective bonus is computed by multiplying not to exceed 6 months of the member's monthly basic pay by the number of years, or monthly fractions thereof of "additional obligated service." A maximum bonus not to exceed 6 years or \$20,000 is also prescribed. 37 U.S.C. 308(d) (Supp. IV, 1980).

Provisions for recouping a selective reenlistment bonus from a member who fails to serve the full enlistment period are similar to those which applied to the regular and variable bonuses. 37 U.S.C. 308(d) (Supp. IV, 1980).

Under applicable regulations, if a member who received a regular reenlistment bonus is discharged early for the purpose of reenlisting, a pro rata portion of the bonus must be recouped at the time of discharge. See Department of Defense Military Pay and Allowances Entitlements Manual, paragraph 10942. One of the obvious

purposes of this regulation is to prevent receipt of two bonuses for the same period of service. However, as is indicated above, the regular reenlistment program has been phased out and replaced by the selective reenlistment bonus under which only "additional" obligated service may be counted in the computation. In view of this restriction under the new program, it does not appear necessary to recoup a portion of the regular reenlistment bonus when the member is discharged early to reenlist and receive a selective reenlistment bonus. That is, the purpose of the recoupment provision would not be present in such a case since the member's selective reenlistment bonus is computed so as to exclude a period equal to the unexpired term of the prior enlistment. Thus, in effect, the member performs the full period of service for which the regular bonus was paid.

Accordingly, Sergeant Timm's regular reenlistment bonus covering the period March 8 to December 7, 1980, should not be recouped.



Acting Comptroller General
of the United States